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16 *Attorneys for Plaintiffs Jolie Design &*
17 *Décor, Inc. and Annie Sloan Interiors, Ltd.*

18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF NEVADA**

20 JOLIE DESIGN & DÉCOR, INC., and
21 ANNIE SLOAN INTERIORS, LTD.,

22 Plaintiffs,

23 v.

24 BB FROSCH, LLC; THE JKKJKK TRUST;
25 JASON SMITH and KRISTIN SMITH, et al.

26 Defendants.

Case No.: 2:18-cv-00145-JAD-VCF

**J. MATTHEW MILLER III AND
RAYMOND G. AREAUX MOTION TO
WITHDRAW AS COUNSEL OF
RECORD FOR PLAINTIFFS**

27 Pursuant to District of Nevada Local Rule LR IA 11-6(b) and Rule 1.16 of the Nevada
28 Rules of Professional Conduct, J. Matthew Miller, III, and Raymond G. Areaux hereby move the
Court for entry of an order granting leave to withdraw from representing Plaintiffs Jolie Design
& Décor, Inc. and Annie Sloan Interiors, Ltd. in this litigation.

STATEMENT OF FACTS

On May 15, 2018, Jolie Design & Decor, Inc. ("JDD") terminated the Plaintiffs' joint
engagement of Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC (the "Carver

1 Darden Law Firm”). (*See* Declarations of Messrs. Miller and Areaux, attached hereto as
 2 Exhibits 1 & 2, respectively.) Both Mr. Miller and Mr. Areaux, who are admitted *pro hac vice*
 3 in this matter, are attorneys of the Carver Darden Law Firm. *Id.* As such, their authorization to
 4 represent Plaintiff JDD in this matter has also ceased, and it may not be possible for the Carver
 5 Darden Law Firm to continue to represent Plaintiff ASI in view of its duties to Plaintiff JDD, a
 6 former client.

7 F. Christopher Austin, with the law firm Weide & Miller, Ltd. will remain counsel of
 8 record and function as lead counsel for Plaintiffs Annie Sloan Interiors, Ltd. and Jolie Design &
 9 Décor, Inc., in this proceeding.

10 **LEGAL STANDARDS**

11 District of Nevada Local Rule LR IA 11-6 governs attorney appearances, substitutions,
 12 and withdrawals. It states the following:

13 **LR IA 11-6. APPEARANCES, SUBSTITUTIONS, AND WITHDRAWALS**

- 14
- 15 (a) A party who has appeared by attorney cannot while so represented appear or act in
 16 the case. This means that once an attorney makes an appearance on behalf of a
 17 party, that party may not personally file a document with the court; all filings must
 18 thereafter be made by the attorney. An attorney who has appeared for a party must
 be recognized by the court and all the parties as having control of the client’s case,
 however, the court may hear a party in open court even though the party is
 represented by an attorney.
 - 19 (b) No attorney may withdraw after appearing in a case except by leave of the court
 20 after notice has been served on the affected client and opposing counsel.
 - 21 (c) A stipulation to substitute attorneys must be signed by the attorneys and the
 22 represented client and be approved by the court. Except where accompanied by a
 23 request for relief under subsection (e) of this rule, the attorney’s signature on a
 24 stipulation to substitute the attorney into a case constitutes an express acceptance
 of all dates then set for pretrial proceedings, trial, or hearings, by the discovery
 plan or any court order.
 - 25 (d) Discharge, withdrawal, or substitution of an attorney will not alone be reason for
 26 delay of pretrial proceedings, discovery, the trial, or any hearing in the case.
 - 27 (e) Except for good cause shown, no withdrawal or substitution will be approved if it
 28 will result in delay of discovery, the trial, or any hearing in the case. Where delay
 would result, the papers seeking leave of the court for the withdrawal or

1 substitution must request specific relief from the scheduled discovery, trial, or
2 hearing. If a trial setting has been made, an additional copy of the moving papers
3 must be provided to the clerk for immediate delivery to the assigned district judge,
bankruptcy judge, or magistrate judge.

4 In addition, Rule 1.16 of the Nevada Rules of Professional Conduct governs the
5 termination of representation. It states the following:

- 6 (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where
7 representation has commenced, shall withdraw from the representation of a client
8 if:
- 9 (1) The representation will result in violation of the Rules of Professional
Conduct or other law;
 - 10 (2) The lawyer's physical or mental condition materially impairs the lawyer's
11 ability to represent the client; or
 - 12 (3) The lawyer is discharged.
- 13 (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a
14 client if:
- 15 (1) Withdrawal can be accomplished without material adverse effect on the
16 interests of the client;
 - 17 (2) The client persists in a course of action involving the lawyer's services that
18 the lawyer reasonably believes is criminal or fraudulent;
 - 19 (3) The client has used the lawyer's services to perpetrate a crime or fraud;
 - 20 (4) A client insists upon taking action that the lawyer considers repugnant or
with which the lawyer has fundamental disagreement;
 - 21 (5) The client fails substantially to fulfill an obligation to the lawyer regarding
22 the lawyer's services and has been given reasonable warning that the
23 lawyer will withdraw unless the obligation is fulfilled;
 - 24 (6) The representation will result in an unreasonable financial burden on the
25 lawyer or has been rendered unreasonably difficult by the client; or
 - 26 (7) Other good cause for withdrawal exists.
- 27 (c) A lawyer must comply with applicable law requiring notice to or permission of a
28 tribunal when terminating representation. When ordered to do so by a tribunal, a
lawyer shall continue representation notwithstanding good cause for terminating

1 the representation.

- 2 (d) Upon termination of representation, a lawyer shall take steps to the extent
3 reasonably practicable to protect a client's interests, such as giving reasonable
4 notice to the client, allowing time for employment of other counsel, surrendering
5 papers and property to which the client is entitled and refunding any advance
6 payment of fee or expense that has not been earned or incurred. The lawyer may
7 retain papers relating to the client to the extent permitted by other law.

8 In addition, Rule 1.9 of the Nevada Rules of Professional Conduct governs the termination
9 of representation. It states, in part, the following:

- 10 (a) A lawyer who has formerly represented a client in a matter shall not thereafter
11 represent another person in the same or a substantially related matter in which that
12 person's interests are materially adverse to the interests of the former client unless
13 the former client gives informed consent, confirmed in writing.

14 ARGUMENT

15 The Court should grant leave to withdraw because the legal standards for withdrawal are
16 satisfied in this instance. Having been discharged from further representation of Plaintiff JDD in
17 this matter, Messrs. Miller and Areaux are required by Nevada Rule of Professional Conduct
18 1.16(a)(3) to bring the instant Motion to Withdraw – as to Plaintiff JDD. Additionally, because
19 Plaintiff JDD is a former client to the Carver Darden Law Firm, Messrs. Miller and Areaux believe
20 that Rule 1.9 of the Nevada Rules of Professional conduct likely does not permit Messrs. Miller
21 and Areaux to continue to represent Plaintiff ASI, thus suggesting that Messrs. Miller and Areaux
22 are, or will likely be, required by Nevada Rule of Professional Conduct 1.16(a)(1) to bring the
23 instant Motion to Withdraw – as to Plaintiff ASI.

24 Such a withdrawal can be accomplished without material adverse effect as conditioned by
25 Nevada Rule of Professional Conduct 1.16(b)(1), because Mr. Austin and the firm of Weide &
26 Miller, Ltd., will continue to represent Plaintiffs in this matter. For the same reason LR II-6(e)
27 and Rule 1.16(d) are satisfied. The requested withdrawal will cause no delay of discovery, trial,
28 or any hearing in the case because the discovery period has not begun, because no trial has been
set, and because Plaintiffs' other attorney-of-record in this case, F. Christopher Austin and the
firm of Weide & Miller, Ltd., will continue as Plaintiffs' counsel in this matter.

1 In accordance with LR IA 11-6(b), and as set forth in the attached Declarations, Messrs.
2 Miller and Areaux have informed Jolie Design & Décor, Inc. and Annie Sloan Interiors, Ltd.
3 (“Plaintiffs”) of their intent and the intent of their firm to withdraw as attorneys of record in this
4 matter. *Id.* In addition, this Motion has been served on all parties of record.

5 **CONCLUSION**

6 For the foregoing reasons, counsel respectfully request that the Court enter an order
7 granting J. Matthew Miller, III, and Raymond G. Areaux leave to withdraw as counsel of record
8 for Plaintiffs Jolie Design & Décor, Inc. and Annie Sloan Interiors, Ltd. in this matter.

9 DATED this 17th day of May, 2018.

10 Respectfully Submitted,

11 **WEIDE & MILLER, LTD.**

12 /s/ F. Christopher Austin

13 F. Christopher Austin, Esq. (Nevada Bar No. 6559)

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26 New Orleans, LA 70163

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28 Fax (504) 585-3801

*Attorneys for Plaintiffs Jolie Design & Décor, Inc. and
Annie Sloan Interiors, Ltd.*

IT IS SO ORDERED:

UNITED STATES MAGISTRATE JUDGE

DATED: _____

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an employee of Weide & Miller, Ltd. and that on **May 17, 2018**, I served a full, true and correct copy of the foregoing **J. MATTHEW MILLER III AND RAYMOND G. AREAUX MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR PLAINTIFFS**, via the United States District Court's CM/ECF filing system and via first class U.S. mail (postage prepaid) upon the following:

BB Frösch LLC
JKKJKK Trust
Kristin Smith
4968 Danube Avenue
Las Vegas, NV 89141

Jason Smith
P.O. Box 779
Hurricane, UT 48737

/s/ Brianna Show
An employee of Weide & Miller, Ltd.

EXHIBIT 1

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27 **DECLARATION OF J. MATTHEW MILLER III**

28 I, J. Matthew Miller III, hereby declare as follows pursuant to 28 U.S.C. § 1746.

1. My name is J. Matthew Miller III. I am attorney practicing in New Orleans, Louisiana with the law firm of Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC (the "Firm").

2. I am of sound mind, over the age of eighteen (18) years, capable of making this Declaration, and I am competent to testify to the facts and matters set forth in this Declaration based on my personal knowledge.
3. On May 15, 2018, Jolie Design & Decor, Inc. (“JDD”) terminated the JDD and Annie Sloan Interiors, Ltd. (“ASI”) joint engagement of the Firm.
4. I believe that Rule 1.9 of the Nevada Rules of Professional Conduct likely will not permit me or the Firm to continue to represent ASI in the above-captioned litigation.
5. On May 17, 2018, the Firm provided notice to both ASI and JDD of the Firm’s and my intent to withdraw as attorneys of record in the above-captioned litigation.

/s/ J. Matthew Miller III
J. Matthew Miller III

EXHIBIT 2

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27 **DECLARATION OF RAYMOND G. AREAUX**

28 I, Raymond G. Areaux, hereby declare as follows pursuant to 28 U.S.C. § 1746.

1. My name is Raymond G. Areaux. I am an attorney practicing in New Orleans, Louisiana and a founding member of the law firm of Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC (the “Firm”).

2. I am of sound mind, over the age of eighteen (18) years, capable of making this Declaration, and I am competent to testify to the facts and matters set forth in this Declaration based on my personal knowledge.
3. On May 15, 2018, Jolie Design & Decor, Inc. (“JDD”) terminated the JDD and Annie Sloan Interiors, Ltd. (“ASI”) joint engagement of the Firm.
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5. On May 17, 2018, the Firm provided notice to both ASI and JDD of the Firm’s and my intent to withdraw as attorneys of record in the above-captioned litigation.

/s/ Raymond G. Areaux
Raymond G. Areaux